IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

OP.No. 2553 of 2000(D)

PETITIONER:

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1. SOSAMMA RAJU, W/O. RAJU DANIEL,
AGED 45 YEARS,
RESIDING AT KURICHITTARAYIL,
MANJUMMAL P.O., ELOOR.

2. DEEPA THANKACHAN ,
W/O. RANJITH RAJU, RESIDING AT DO. DO.

BY ADV. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU

RESPONDENTS:

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1. DEPUTY TAHASILDAR (REVENUE RECOVERY),
TALUK OFFICE, NORTH PARAVUR,
ERNAKULAM DISTRICT.

2. VILLAGE OFFICER,
ELOOR VILLAGE, ELOOR.

ADDL. 3RD RESPONDENT IMPLEADED.

3. SALES TAX OFFICER, IST CIRCLE,
ERNAKULAM.

ADDL. 3RD RESPONDENT IMPLEADED AS PER ORDER DT. 20.12.2006
BY GOVERNMENT PLEADER SMT.R.BINDU

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.NO.2553/2000

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE CERTIFICATE OF INCORPORATION OF COMPANY ISSUED BY THE REGISTRAR OF COMPANIES, KERALA.

EXT.P2:- COPY OF THE NOTICE NO.C1-45/99-2000/ST DT.1.11.99 FOR THE YEAR 86-87 ISSUED BY THE 1ST RESPONDENT.

EXT.P3:- COPY OF THE NOTICE NO.C-46/99-2000/ST DT.1.11.99 FOR THE YEAR 1986-87 OF THE 1ST RESPONDENT.

.EXT.P4:- COPY OF THE NOTICE NO.C1-44/99-2000/ST DT.1.11.99 FOR THE YEAR 1987-88 OF THE DO. DO.

EXT.P5:- COPY OF THE NOTICE NO.C1-43/99-2000/ST DT.1.11.99 OF DO. DO.

EXT.P6:- COPY OF THE NOTICE NO.C1-41/99-2000/ST DT.1.11.99 FOR THE YEAR 88-89 OF DO. DO.

EXT.P7:- COPY OF THE NOTICE NO.C1-49/99-2000/ST DT.1.11.99 FOR THE YEAR 1989-90 OF DO. DO.

EXT.P8:- COPY OF THE NOTICE NO.C1-48/99-2000/ST DT.1.11.99 FOR THE YEAR 1989-90 OF DO. DO.

EXT.P9:- COPY OF THE NOTICE NO.C1-42/99-2000/ST DT.1.11.99 FOR THE YEAR 1989-90 OF DO. DO.

EXT.P10:- COPY OF THE NOTICE NO.C1-40/99-2000/ST DT.1.11.99 OF THE DO. FOR THE YEAR 1990-1991.

EXT.P11:- COPY OF THE NOTICE NO.C1-41/99-2000/ST DT.1.11.99 FOR THE YEAR 1990-91. OF THE DO. DO.

EXT.P12:- COPY OF THE NOTICE NO.C1-36/99-2000/ST DT.1.11.99 FOR THE YEAR 1991-92 OF THE DO. DO.

EXT.P13:- COPY OF THE NOTICE NO.C1-37/99/2000/ST DT.1.11.99 FOR THE YEAR 91-92 OF DO. DO.

EXT.P14:- COPY OF THE NOTICE NO.C1-38/99-2000/ST DT.1.11.99 FOR THE YEAR 92-93 OF THE DO. DO.

EXT.P15:- COPY OF THE NOTICE NO.C1-39/99-2000/ST DT.1.11.99 FOR THE YEAR 1993-94 OF DO. DO.

EXT.P16:- COPY OF THE NOTICE DT.1.11.99 ISSUED UNDER SEC. 34 OF THE REVENUE RECOVERY ACT FOR ATTACHMENT OF THE IMMOVABLE PROPERTY ISSUED BY THE 1ST RESPONDENT.

EXT.P17:- COPY OF THE SALE DEED NO.6795/99 OF S.R.O. , ALANGAD. DT.3.12.99.

OP. NO.2553/2000

EXT.P18:- COPY OF THE ORDER DT.24.12.04 IN TA.NOS. 62, 63, 64 & 67 OF 2003 OF THE SALES TAX APPELLATE TRIBUNAL, ERNAKULAM.

EXT.P19:- COPY OF THE ORDER DT.31.5.05 OF THE SALES TAX APPEALLATE TRIBUNAL IN TA.NO.65/2003 FOR THE YEAR 1991-92.

EXT.P20:- COPY OF THE APPEAL FILED BY M/S.MELCIFAB (INDIA) PVT. LTD. AGAINST THE ASSESSMENT ORDER FOR THE YEAR 1990-91 BEFORE THE APPELLATE ASSISTANT COMMISSIONER, COMMERCIAL TAXES, ERNAKULAM .

EXT.P21:- COPY OF THE APPEAL FILED BY M/S. MELCIFAB (INDIA) PVT.LTD. AGAINST THE ASSESSMENT ORDER FOR THE EYAR 1992-93 BEFORE THE APPELLATE ASSISTANT COMMISSIONER, COMMERCIAL TAXES, ERNAKULAM.

EXT.P22:- COPY OF THE APPEAL FILED BY M/S. MELCIFAB (INDIA) PVT. LTD. AGAINST THE ASSESSMENT ORDER FOR THE YEAR 1993-94 BEFORE THE APPELLATE ASSISTANT COMMISSIONER, COMMERCIAL TAXES, ERNAKULAM.

/TRUE COPY/

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C.N.RAMACHANDRAN NAIR, J.

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O.P. No.2553 of 2000

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Dated this the 20th day of December, 2006.

JUDGMENT

The O.P. is filed challenging recovery proceedings for recovery of arrears of sales tax due from a private limited company which was managed by first petitioner, her husband and husband's mother. This court felt that stay order originally granted was not justified and therefore, stay order was modified with direction to pay 50% of arrears of tax which is not complied with. The Tahsildar through Government Pleader reported that first petitioner transferred property to prevent recovery. Transfer to defraud creditors is hit by Section 53 of the Transfer of Property Act. The Tahsildar has also stated that by virtue of operation of Section 44 of the Revenue Recovery Act transfers will be void and recovery can be continued. Counsel for the petitioners contended that assessments and demands have been modified in appeal at two levels and there is substantial reduction of tax liability. Of course if assessee has got relief in the form of reduction of tax, then recovery should be limited to such lower amount. However, since petitioners have not complied with the interim order, recovery can be continued for the actual amount due. If any one claims any right in any of the lands under attachment, then such person can make a claim petition under Section 46 of the Revenue Recovery Act, which the recovery authorities will dispose of before proceeding for sale. In view of the alternate mechanism for settlement of dispute of claimants,

there is no need for this court to consider the other contentions raised. The O.P. is therefore dismissed with the above observation.

C.N.RAMACHANDRAN NAIR
Judge

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